

CLEAR THE BENCH



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The Honorable Scott Gessler
Secretary of State
1700 Broadway, Suite 200
Denver, CO 80290

Re: Rules Concerning Campaign and Political Finance, 8 CCR 1505-6

Mr. Secretary,

Clear The Bench Colorado is a non-partisan, non-profit organization established to provide an alternative source of substantive information on judicial performance in order to provide greater transparency and encourage accountability of sitting judges as part of the constitutional process.

In addition to providing substantive evaluations of judicial performance on the appellate level – an effort recognized on a national level (based on analysis of appellate court opinions for constitutionality, instead of merely providing a “review” of survey returns provided by a selected subset of respondents), ***CTBC*** provides general background on the judicial selection and retention process, analysis and links to full text of Colorado Supreme Court and appellate court written opinions, links to constitutional and statutory language for reference, and links to other evaluations or reviews of judicial performance (including the “reviews” by the Colorado Office of Judicial Performance Evaluation), as well as general commentary and background on issues related to the judiciary.

Pursuant to Advice from the Secretary of State, **CTBC** registered as an issue committee on its formation, and consistently made all required disclosures about its activities, including reports on contributions and expenditures. As CTBC is not currently engaged in direct advocacy, it continues as an “Issue Committee” under Colorado’s “campaign finance” regime.

As a result of public disclosure of contributions, CTBC was subjected to a series of politically-motivated harassing attacks (filed as “campaign finance complaints”) in administrative court, despite complying with all relevant regulations and requirements and operating in accordance with guidance issued by the office of Secretary of State.

Added to the considerable administrative burden of recording and reporting numerous small individual contributions, the impact of campaign and political finance regulations on the ability of a citizen activist to participate in the civic arena was significantly negative, even severe.

Accordingly, **Clear The Bench Colorado** supplements previous written and oral testimony with additional comment on specific proposed campaign finance rules changes.

Discussion:

As a general principle, **Clear The Bench Colorado** urges adoption of rules and standards which minimize the burden of compliance, disclosure and reporting in pursuit of the exercise of political speech, pursuant to the Constitutional direction (enshrined in the 1st Amendment to the U.S. Constitution) that **“Congress [and by incorporation under the 14th Amendment, state legislatures and local governments] shall make no law... abridging the freedom of speech.”**

Accordingly, **Clear The Bench Colorado** supports efforts to clarify and simplify any extant regulations.

Specifically:

1.9 **CTBC** supports the more precise and clear language of Proposed Rule 1.9 (“Frequent” and “Infrequent” filing schedule) to clarify the schedule as applying to the year of election rather than “odd” or “even” years, as certain offices (i.e. municipal elections) typically occur in “odd” years.

1.10 **CTBC** has reservations regarding Proposed Rule 1.10 (“Influencing or attempting to influence”) restricting the definition strictly to “expenditures for communications” – since the range of activities undertaken by political organizations to “influence” elections extends far beyond mere “expenditures for communications” (i.e. “Get Out The Vote” efforts, letter-writing campaigns, speaking appearances, etc.) as a part of candidate advocacy.

1.12.3 **CTBC** agrees with objections to the “30% of the organization’s total spending” as a standard for determining “major purpose” or political advocacy as falling disproportionately on smaller and less well-funded organizations. Alternatively, a combination or “either/or” threshold of a specific dollar amount and/or percentage of total spending might be considered.

1.15 **CTBC** opposes restriction of the definition of “person” under Article XXVIII to “natural person” (i.e. human being) to the exclusion of corporate or institutional “persons” currently included. Otherwise it would be possible to form groups of institutional “persons” wholly able to avoid compliance with any of the reporting or disclosure requirements that would fall disproportionately on individuals and small, grassroots groups.

4.1 **CTBC strongly supports** adoption of Proposed Rule 4.1, Issue Committee reporting/disclosure thresholds, as compliant with the 10th Circuit decision in *Sampson v. Buescher* AND the stated intent of Colorado Constitution Article XXVIII to control “*a disproportionate level of influence over the political process*” by “*special interest groups*” via “*large campaign contributions.*” (Colorado Constitution, Art. XXVIII Section 1). Failure to adopt a reporting/disclosure threshold in compliance with the 10th Circuit ruling subjects small grassroots groups pursuing civic engagement at legal risk while imposing undue (and unconstitutional) burdens on the exercise of free speech, AND subjects the state of Colorado to both legal and financial risk due to the near-certitude of expensive (and assuredly successful) legal challenges to a provision already ruled unconstitutional in Federal court.

CTBC supports the remainder of the proposed changes to Rule 4 (and subsections) as common-sense clarifications for Issue Committees.

5.1, 5.2 **CTBC** supports the proposed changes to Rule 5 (and subsections) as common-sense clarifications for Independent Expenditure Committees.

7.2.2 **CTBC** suggests the adoption of the language governing “frequent” and “infrequent” filing from Proposed Rule 1.9 be substituted for the “even-year” and “odd-year” language in this section for the sake of consistency and clarity, to the extent such organizations are involved in relevant elections.

10.1 **CTBC** has reservations regarding the reporting of aggregate contributions, particularly as applied to small cash contributions submitted anonymously (via “pass the hat” or “stuff the bowl” procedures). Given that the identity of the contributor is usually unknown (and unknowable) in such situations, the imposition of an aggregate reporting requirement on such contributions imposes an undue burden on both recipient and contributor alike. Since the state has NO compelling interest in collecting such data, this requirement is of suspect constitutionality and should be deleted. Alternatively, including language to clarify that only “source-known” contributions are subject to the aggregate reporting requirement would mitigate the worst aspects of the undue (and absent compelling state interest, constitutionally-suspect) requirement to gather data on below-threshold (anonymous) contributions.

20.1 **CTBC** supports adoption of Proposed Rule 20 (Redaction of Sensitive Information), and also urges the Secretary to expand the criteria under which an individual may invoke this rule to include *risk to income and livelihood* be added to risk to personal (physical) safety as acceptable grounds for requesting redaction of personal information in the online reports displayed on the campaign finance website. There is no compelling state or public interest in forcing the public disclosure of personal information of people wishing to participate in the political or civic process; indeed, such public disclosure exerts a chilling effect on free speech.

In the words of another observer,

“What is forced disclosure but a state-maintained database on citizen political activity?”

20.2 CTBC suggests that the timing of a request for redacting sensitive information be open to include the possibility of the individual’s filing at/before the time of the contribution, and **before** the recipient committee or organization files the relevant contribution report with the state. Alternatively (or complementarily), the filing organization might note (or “tag”) the existence of a contributor who wishes to redact personal identifying information from online public view.

Concluding Observations:

It is striking to note that the overwhelming majority of testimony and comment submitted in opposition to the proposed rules changes has been submitted by politically active groups operating outside the scope of the reporting and disclosure requirements imposed by Colorado’s campaign finance regime – presenting a classic case of **“rules for thee, but not for me.”**

Clear The Bench Colorado urges the office of Secretary of State to launch investigations into the political advocacy activities of said groups for violations of Colorado’s campaign finance laws.

A partial list of such organizations is appended below.

Respectfully Submitted,

Matt Arnold

Director, Clear The Bench Colorado

Partial List of Politically-Active Organizations avoiding campaign finance reporting/disclosure, while advocating for imposition of burdensome reporting/disclosure requirements on others:

- **Citizens for Integrity**
- **Colorado Common Cause**
- **Colorado Conservation Voters**
- **Colorado Ethics Watch (CEW – pronounced “sue”, it’s what they do)**
- **Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR)**
- **Colorado Progressive Coalition**
- **Mi Familia Vote**
- **NARAL Pro-Choice Colorado**
- **New Era Colorado**
- **Planned Parenthood Votes Colorado**